



The Real Facts

A Critical Analysis of the Bush Administration's Claims on CAFTA
Prepared by the Democratic Staff of the Ways and Means Committee

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CAFTA Countries' Labor Laws Do Not Reflect ILO Standards

MYTH: *The Bush Administration asserts that the CAFTA countries' labor laws comply with internationally-recognized rules regarding the rights of workers.*

REALITY: *There are no fewer than 20 areas in which the CAFTA countries' labor laws fail to comply with even the most basic international norms, as documented by the International Labor Organization, the U.S. State Department and multiple non-governmental organizations.*

COSTA RICA

Violations of the Right to Associate

- **Onerous Strike Requirements.** Costa Rican law includes a number of procedural requirements for a strike that, taken as a whole, make it nearly impossible for a strike to be called. For example, Costa Rica requires that 60% of all workers in a facility vote in favor of a strike for the strike to be legal. These requirements violate the right to strike protected under the right to associate (ILO Convention 87).

Violations of the Right to Organize and Bargain Collectively

- **Use of Solidarity Associations to Bypass Unions.** Costa Rican law allows employers to establish "solidarity associations" and to bargain directly with such associations, even where a union has been established. The failure to explicitly prohibit employers from bypassing unions in favor of employer-based groups violates the right to organize and bargain collectively (ILO Convention 98)
- **Inadequate Protection Against Anti-Union Discrimination.** Costa Rica's laws do not provide for swift action against anti-union discrimination. For example, there is no accelerated judicial review for dismissal of union leaders. (ILO Convention 98)

EL SALVADOR

Violations of the Right to Associate

- **Restrictive Requirements for Formation of Industrial Unions.** El Salvador uses union registration requirements to impede formation of unions, in contravention of the right to associate (ILO Convention 87).

Violations of the Right to Organize and Bargain Collectively

- **Inadequate Protection Against Anti-Union Discrimination.** El Salvador fails to provide adequate protection against anti-union discrimination. In particular, El Salvador fails to provide for reinstatement of workers fired because of anti-union discrimination. El Salvador also allows the blacklisting in export processing zones of workers who join unions. These failures violate the right to organize and bargain collectively (ILO Convention 98).

GUATEMALA

Violations of the Right to Associate

- **Restrictive Requirements for Formation of Industrial Unions.** Guatemala requires a majority of workers in an industry to vote in support of the formation of an industrial union for the union to be recognized. This high, industry-wide threshold is an effective bar to the formation of industrial unions, and contravenes the right to associate (ILO Convention 87).
- **Onerous Requirements to Strike.** Guatemalan law includes a number of provisions that interfere with the right to strike. The Guatemalan Labor Code mandates that unions obtain permission from a labor court to strike, even where a majority of workers have voted in favor of striking. In addition, the Labor Code requires a majority of a firm's workers to vote in favor of the strike. These laws violate the right to strike protected under the right to associate (ILO Convention 87).
- **Restrictions on Union Leadership.** Guatemala maintains a number of restrictions with respect to union leadership including: (1) restricting leadership positions to Guatemalan nationals; and (2) requiring that union leaders be currently employed in the occupation represented by the union. These restrictions violate the right to associate (ILO Convention 87).
- **Ambiguity in Certain Criminal Penalties.** Guatemala's Penal Code provides for criminal penalties against anyone who disrupts the operation of enterprises that contribute to the economic development of the country. Whether and how these penalties apply to workers engaged in a lawful strike is unclear, and this ambiguity has deterred workers from exercising their right to strike. Application of these penalties to a worker who engaged in a lawful strike would violate the right to associate and the right to organize and collectively bargain (ILO Conventions 87 and 98, respectively).

Violations of the Right to Organize and Bargain Collectively

- **Inadequate Protection Against Anti-Union Discrimination.** Guatemala does not adequately protect against anti-union discrimination. Specific problems include ineffective penalties for the wrongful dismissal of workers, and inadequate legal mechanisms to enforce court orders. These failures violate the right to organize and bargain collectively (ILO Convention 98).

HONDURAS

Violations of the Right to Associate

- **Burdensome Requirements for Union Recognition.** Honduran law requires at least 30 workers to form a trade union. This numerical requirement acts as a bar to the establishment of unions in small firms, and violates the right to associate (ILO Convention 87).
- **Limitations on the Number of Unions.** Honduran law prohibits more than one trade union in a single enterprise. This restriction violates the right to associate (ILO Convention 87).
- **Restrictions on Union Leadership.** Honduras requires that union leaders be Honduran nationals, and employed in the occupation that the union represents. These restrictions violate on the right to associate (ILO Convention 87).
- **Restrictions on Federations.** Honduras prohibits federations from calling strikes. This prohibition contravenes the right to associate (ILO Convention 87).
- **Onerous Strike Requirements.** Two-thirds of union membership must support a strike for it to be legal. This requirement violates the right to associate (ILO Convention 87).

Violations of the Right to Organize and Bargain Collectively

- **Inadequate Protection Against Anti-Union Discrimination.** Honduras does not provide adequate sanctions for anti-union discrimination. For example, under the law, only a very small fine equivalent to approximately \$12 to \$600 can be assessed against employers for interfering with the right of association. The failure to provide effective penalties to anti-union discrimination violates the right to organize and bargain collectively (ILO Convention 98).
- **Few Protections Against Employer Interference in Union Activities.** Honduras prohibits employers or employees with ties to management from joining a union; it does not, however, prohibit employers from interfering in union activities through financial or other means. The failure to preclude employer involvement violates the right to organize and bargain collectively (ILO Convention 98).

NICARAGUA

Violations of the Right to Associate

- **Procedural Impediments to Calling A Strike.** Nicaragua maintains a number of restrictive procedural requirements for calling strikes. Since all legal protections may be withdrawn in the case of an illegal strike, the practical outcome is that workers who strike often lose their jobs, thus undermining the right to strike protected by the right to associate (ILO Convention 87).

Violations of the Right to Organize and Bargain Collectively

- **Inadequate Protection Against Anti-Union Discrimination.** Nicaragua's laws permit employers to fire employees who are attempting to organize as long as they provide double the normal severance pay. This allowance violates the right to organize and bargain collectively (ILO Convention 98).
- **Use of Solidarity Associations to Bypass Unions.** Nicaragua allows employers to create "solidarity associations" but does not specify how those associations relate to unions. The failure to include protections against employers using solidarity associations to interfere with union activities violates the right to organize and bargain collectively (ILO Convention 98).